

2016

Ancient and Comely Order: The Use and Disuse of Arbitration by New York Quakers Symposium

F. Peter Phillips

Follow this and additional works at: <https://scholarship.law.missouri.edu/jdr>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

F. Peter Phillips, *Ancient and Comely Order: The Use and Disuse of Arbitration by New York Quakers Symposium*, 2016 J. Disp. Resol. (2016)

Available at: <https://scholarship.law.missouri.edu/jdr/vol2016/iss1/8>

This Conference is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Journal of Dispute Resolution by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

Ancient and Comely Order: The Use and Disuse of Arbitration by New York Quakers

F. Peter Phillips*

ABSTRACT:

From the late 17th century, the Religious Society of Friends (“Quakers”) observed a method of resolving disputes arising within congregations that was scripturally based, and culminated in final and binding arbitration. The practice of Quaker arbitration gradually disappeared during the late 19th and early 20th centuries, and few modern Quakers are even aware of it. This article traces that decline and notes similarities with mercantile arbitration. In both religious and mercantile arbitration, a defined community valued the goal of avoiding group disruption more than the goal of vindicating individual legal rights. In both cases, members of the community applied distinct and particularized standards of conduct, rather than general legal codes, to resolve disputes. Finally, in both cases arbitration awards were, as a practical matter, self-executing and resort to court enforcement was inapplicable. The study proposes that attributes such as mutual accountability, closed communities, and shared behavioral expectations are distinctive hallmarks of the arbitration process, in the absence of which arbitration devolves from a powerful instrument of community cohesion to a mere alternative legal process.

I. INTRODUCTION

For over two centuries, as part of their religious discipline, Quakers¹ in New York Yearly Meeting ascribed to the practice of private arbitration of disputes arising among them, and intentional avoidance of the courts to resolve secular conflicts involving both Quakers and non-Quakers. Among Quakers at large, this practice

*F. Peter Phillips is Adjunct Professor and Director of the Alternative Dispute Resolution Skills Program at New York Law School. He is an attorney whose practice is limited to service as a mediator, arbitrator or consultant, and is based in Montclair, NJ. He is a member of Cornwall (NY) Monthly Meeting of the Religious Society of Friends and has served on the Committee for Conflict Transformation of the New York Yearly Meeting of the Religious Society of Friends.

1. The term “Quaker” is a broadly accepted term for a member of the Religious Society of Friends, which was founded in England in 1647 by George Fox and others as a result of decisive personal mystical experiences. First called “Children of the Light” but afterwards “Friends,” or “Friends of the Truth,” the sect grew in the English Midlands, London, Scotland and Ireland through the mid-17th century and subsequently, prompted in part by domestic persecution, in the American colonies. In the course of a judicial hearing at Nottingham in 1649, George Fox bade the court to tremble at the word of the Lord, prompting Justice Bennett to call Fox a “Quaker.” See *How Quakers Got Their Name*, QUAKER SPEAK (MAR. 12, 2015) <http://quakerspeak.com/how-quakers-got-their-name/>; ELBERT RUSSELL, *THE HISTORY OF QUAKERISM* 18-45 (1942). According to an alternative tradition, the term derived from early adherents’ “new outburst of spiritual power, which sometimes caused its possessors to tremble with fervor, [and] was labeled ‘Quaker’ by its opponents.” HOWARD H. BRINTON & MARGARET HOPE BACON, *FRIENDS FOR 350 YEARS* 2 (2002). In this article the terms “Friends” and “Quakers” are used as synonyms.

continued well past the broad social acceptance of lawyers and civil litigation as the preferred method of civil dispute resolution.

The practice of Quaker arbitration² has been the subject of prior research.³ This essay attempts to continue that research by posing three inquiries unique to Quakers as a religious community. The first section⁴ addresses the spiritual and social foundations of the practice of Quaker arbitration, and suggests that both scriptural and societal forces gave rise to its practice in the New York region during the 18th and 19th centuries. The second section⁵ explains the types of disputes that were subject to Quaker arbitration; the procedures followed in bringing a matter before a Quaker arbitral panel; and the processes by which Quaker arbitration awards were enforced. The third section⁶ details the decline of the use of arbitration in New York Yearly Meeting during the first half of the 20th century, and notes that the scriptural and religious discernment and intentionality that originally gave rise to the practice were notably absent in the events leading to its abandonment. The article concludes by questioning whether the absence of internal conflict resolution processes that culminate in final adjudication, such as arbitration provided, has had a deleterious effect on Quaker congregations as cohesive spiritual communities, and whether the absence of unique standards and procedures accepted by a distinctive community have had a deleterious consequence on the efficacy and applicability of arbitration.

2. This paper addresses the Quaker practice of private adjudication of secular disputes between individuals, and does not concern other, equally singular, contributions of the Religious Society of Friends to the history of arbitration, such as the advocacy of international agreements by which differences between nations can be settled by arbitration rather than war. That topic has

been a concern of Friends from the beginning . . . Such instances include [Robert] Barclay's letter in 1678 to the plenipotentiaries who were negotiating the terms of peace at Nimeguen; Joseph Sturge's attempted mediation between Denmark and Schleswig-Holstein in 1850; the peace deputation to the Czar of Russia in 1854 headed by Joseph Sturge, which, had there been less hysteria in England, might have prevented the Crimean War; John Bright's successful efforts to secure arbitration between England and the Northern States in 1861; the attempt of the Quaker government of Rhode Island to avert by arbitration King Philip's War in 1675; the efforts of John Fothergill and David Barclay in frequent conference with Benjamin Franklin to avert the American War of Revolution and the successful efforts of George Logan, grandson of [William] Penn's secretary James Logan, to prevent war between the United States and France . . .

BRINTON & BACON, *supra* note 1, at 205.

3. MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW* 151-54 (1977) (noting the widespread practice of arbitration by Pennsylvania Quakers and arguing that the decline of the practice was linked to the acceptance by merchants of lawyers and the private judicial system in the early 19th century). Carli N. Conklin, *Transformed, Not Transcended: The Role of Extrajudicial Dispute Resolution in Antebellum Kentucky and New Jersey*, 48 AM. J. LEGAL HIST. 39, 98 (2006) (arguing that statutes supporting arbitration in New Jersey were heavily influenced by Quakers and, far from undermining commercial arbitration, in fact acted "to support and uphold a particularly Quaker vision of extrajudicial dispute resolution").

4. See *infra* notes 7 - 25 and accompanying text.

5. See *infra* notes 55 - 98 and accompanying text.

6. See *infra* notes 99 - 170 and accompanying text.

II. QUAKER PRACTICE AND THE ORIGINS OF QUAKER TESTIMONIES: SCRIPTURAL AND TESTIMONIAL BASIS FOR THE QUAKER PRACTICE OF PRIVATE DISPUTE RESOLUTION

Quaker traditions of conflict resolution are grounded on the notion of “gospel order.”⁷ These, in turn, find root in certain passages of Scripture.⁸

Historically, the concept of “gospel order” arose from strictly religious beliefs. Early Quaker scholar Robert Barclay, in his seminal *Apology*, described the transcendental experience of a “pure and holy birth” by the agency of which a person is “freed from sin and the transgression of the law of God, and in that respect perfect.”⁹ Extrapolating from this concept of a “re-birth into purity,” contemporary scholar Lloyd Lee Wilson defines “gospel order” as “that state of affairs which would prevail everywhere if the experience of the pure and holy birth of which Barclay speaks were universal.”¹⁰ In that sense, “gospel order” might be understood as that way of living that approximates, and ultimately yields, the divinely inspired community.¹¹

Wilson identifies three “distinctive Quaker beliefs” regarding “gospel order”:¹²

- i. That Christ’s restoration of the Creator’s order is effective in the present moment, and thus no future “rapture” must be awaited for God’s plan to be experienced; ii. That every individual is intrinsically capable of living in “gospel order,” and thus there is no theological hurdle or ecclesiastic initiation or ritual that must be accepted in order to realize salvation; and iii. That, in light of the human proclivity to fall from the perfect state, each person must be in the state of constant discernment of God’s will, seeking “gospel order” in every social situation.¹³

While salvation is an individual experience, the Society of Friends has always relied upon corporate discernment rather than individual meditation to determine the will of the Spirit. As Wilson observes,

For early Friends to admonish each other to keep to the gospel order, therefore, was to remind themselves that they were citizens of the Kingdom of God, not a worldly government, and should act accordingly. . . . It is incumbent on Friends to help one another discern that one choice among the many that may be open, and to carry it out faithfully. When we do so, we

7. See, e.g., NANCY BLACK SAGAFI-NEJAD, *FRIENDS AT THE BAR: A QUAKER VIEW OF LAW, CONFLICT RESOLUTION, AND LEGAL REFORM* 178 (2011).

8. *Id.*

9. ROBERT BARCLAY, *BARCLAY’S APOLOGY FOR THE TRUE CHRISTIAN DIVINITY, AS PROFESSED BY THE PEOPLE CALLED QUAKERS* 127 (abr. by George Harrison, 2d ed. 1822).

10. LLOYD LEE WILSON, *ESSAYS ON THE QUAKER VISION OF GOSPEL ORDER* 7 (2001).

11. Indeed, this concept of societal implications of gospel order lingers in modern Quaker teaching. A contemporary scholar writes: “A most expansive approach to Gospel Order would define it as the social result of the free operation of the Spirit to create coherent community practice under its guidance” BRIAN DRAYTON, *UNITY, DISUNITY, DIVERSITY, OR SOME MYSTERIES OF THE HOLY SPIRIT’S LIFE A WORK IT ITS BODY’S MEMBERS HINTED AT: A LETTER TO NEW ENGLAND FRIENDS* 21 (2007).

12. WILSON, *supra* note 10, at 8-9.

13. *Id.*

lift all of creation closer to that perfection which God intends and of which Barclay wrote.¹⁴

Another Quaker writer, Sandra Cronk, expressly links “gospel order” to communal society as practiced by early Friends.¹⁵ Experientially, Quakers discerned that God, once attended to, propounds a new social order of reconciliation and community. Early Friends believed that God would manifest this new order in the fabric of the social, political, and economic life of the whole society. Indeed, in embracing the concept of “gospel order,” they felt that, ultimately, this new manner of relationship would affect all of creation, restoring all things to their right relationship with God and with each other. “Gospel order” was the phrase early Friends most often used to describe the communal/ecclesiastical and societal dimensions of this new state.¹⁶ Secular conflicts among Friends were therefore perceived as instances of departure from a divinely-inspired state—as violations of the divine will as discerned through “gospel order.”

Two scriptural passages were particularly influential in the development of practices aimed at addressing secular conflicts within Quaker communities. The first, cited by the influential Quaker writer George Fox, is the chastening voice of Saint Paul, arguing that the Spirit-led discernment of the religious community, rather than the secular values embedded in the law, is the only proper forum for conflict resolution:

Dare any of you, having a matter against another, go to law before the unjust, and not before the saints? Do ye not know that the saints shall judge the world? And if the world shall be judged by you, are ye unworthy to judge the smallest matters? . . . I speak to your shame. Is it so, that there is not a wise man among you? No, not one that shall be able to judge between his brethren? But brother goeth unto law with brother, and that before the unbelievers. Now, therefore there is utterly a fault among you, because ye go to law one with another. Why do you not rather suffer yourselves to be defrauded? Nay, ye do wrong, and defraud, and that your brethren.¹⁷

This passage was cited as authority for the Advice approved by London Yearly Meeting in 1696 that Quakers should “shun all occasions for strife and discord; and take care to make a speedy end of all differences that are or may happen among yourselves, as hath been often advised, and that according to the holy apostle’s doctrine.”¹⁸

The second source of scriptural authority for processes of dispute resolution in religious communities was found in the Gospel of Matthew, and spoke directly to

14. *Id.* at 10.

15. SANDRA L. CRONK, *GOSPEL ORDER: A QUAKER UNDERSTANDING OF FAITHFUL CHURCH COMMUNITY* 297 (1991).

16. *Id.* at 5.

17. 1 *Corinthians* 6:1-8.

18. EXTRACTS FROM THE MINUTES AND ADVICES OF THE YEARLY MEETING OF FRIENDS HELD IN LONDON 7 (1783).

the condition of any early Quaker community that took seriously the necessary implications of the warnings of Paul. It came to be regarded (perhaps out of strict context) in effect a procedural guideline—almost a “cookbook”—for how secular conflicts among Friends were to be handled:

If thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he shall neglect to hear them, tell it unto the church¹⁹

This three-step progression (or escalation) is familiar to modern students of Alternative Dispute Resolution systems design. It is, at heart, a “Negotiate/Mediate/Arbitrate” stepped process,²⁰ adopted by many modern employers²¹—a fact that attests to its proven practicality. And, as noted below, it was followed quite closely by Quakers well into the 18th century. It was expressly adopted by London Yearly Meeting in 1697:

When any friend or friends shall hear of any such difference betwixt any friend in that meeting to which they do belong, that they forthwith speak to, and tenderly advise, the persons between whom the difference is, to make a speedy end thereof; and if that friend, or those friends do not comply with their advice, that then they take to them one or two friends more, and again exhort them to end their difference; and if they, or either of them refuse, then let them know, that it is the advice and counsel of friends, that they should each choose an equal number of indifferent, impartial, and judicious friends to hear, and speedily determine the same, and that they do bind themselves to stand to their award and determination, or the award and determination of the major part of them, that shall be made and signed by the arbitrators, or the award and arbitration made and signed by the umpire, if there be one agreed unto.²²

19. *Matthew* 18:15-17 (King James).

20. SAGAFI-NEJAD, *supra* note 7, at 179.

21. See HOW COMPANIES MANAGE EMPLOYMENT DISPUTES: A COMPENDIUM OF LEADING CORPORATE EMPLOYMENT PROGRAMS (2002) (providing a study of “stepped-process” employment dispute resolution practices by leading American employers).

22. EXTRACTS FROM THE MINUTES AND ADVICES OF THE YEARLY MEETING OF FRIENDS HELD IN LONDON 8 (1783). This provision, and the procedures arising from it noted below, reflect almost verbatim a section of a 1678 letter written by George Fox:

Dear Friends, if there happen any difference betwixt Friend and Friend, let them speak to one another; and if they will not hear, let them take two or three of the meeting they belong to, that they may end it if they can. And if they cannot end it, then it may be laid before the Monthly Meeting. And if it cannot be ended there, then it may be brought to the Quarterly Meeting, and there let it be put to half a dozen Friends, that they may end it; and keep the meeting quiet. Or they that are at difference, may choose three Friends, and Friends may choose three more, and let the parties stand to their judgment. And if there be any difference brought to the Monthly, of Quarterly Meeting, either men’s or women’s, after you have heard them one by one, and let but one speak at a time, know of them whether they will stand to your judgment. If they will, let half a dozen Friends make a final end of it. But if they will not stand to your judgment, they are not fit to bring it thither. All that are concerned to end any difference, let them have but one ear to one party, and

Its theological basis among Quakers has been called by Sandra Cronk one of “mutual accountability.”²³ The invitation of the three-step process of Matthew 18 involves mature, direct, interpersonal relationships; the relationship of the individual with the meeting’s elders; and the accountability of the individual to the entire faith community. As Cronk points out, it has benefits to practically any organized social body, but is particularly apt in a family or close-knit community, where:

People care about one another. They have a commitment to live in a relationship of trust and love, a relationship where people hear and respond to each other. Accountability is not just concerned with members meeting the group’s outward expectations of behavior but about nurturing the deeper relationship of trust, caring and responsiveness.²⁴

Thus, concludes Cronk, “Matthew 18 is an outline of a procedure to embody accountability within a community so that it does not have to use an impersonal, legalistic framework.”²⁵

III. QUAKER ASSUMPTIONS CONCERNING EXTRA-LEGAL PROCESSES

Quaker traditions have historically emphasized certain central faith-based testimonies.²⁶ As articulated by the current Book of Discipline of New York Yearly Meeting,²⁷ these tenets include individual experience of the divine (“There is that of God in everyone”);²⁸ truthfulness and integrity (“[w]e are called to a genuineness of life and speech that leaves no room for deceit or artificiality”);²⁹ simplicity (“detachment from possessions and worldly aspirations”);³⁰ community (“Living together . . . gives us an opportunity to practice Jesus’ teachings”);³¹ equality (“The Holy Spirit, which we all share, makes us equal”);³² and non-violence (“Through [nonviolence], we affirm the divine Light in every human being”).³³ These and

let them reserve the other ear for the other party, so that they may judge impartially without affection or favor, or respect of persons.

THE FRIENDS’ LIBRARY: COMPRISING JOURNALS, DOCTRINAL TREATISES, AND OTHER WRITINGS OF MEMBERS OF THE RELIGIOUS SOCIETY OF FRIENDS 135 (William Evans & Thomas Evans eds., 1837).

23. Cronk, *supra* note 15, at 22.

24. *Id.*

25. *Id.*

26. Quakers have historically abjured creed, while adhering to certain accepted principles – and they are proud of it. “Most Quakers take the absence of a creed as an invitation and encouragement to exercise an extra measure of personal responsibility for the understanding and articulation of Quaker faith.” PACIFIC YEARLY MEETING FAITH AND PRACTICE 23 (2001). The resulting religious traditions are as broadly applicable (to some) as they are vague (to others). As James Boswell observed, “many a man is a Quaker without knowing it.” See PAT ROGERS, THE SAMUEL JOHNSON ENCYCLOPEDIA 319 (1996).

27. FAITH AND PRACTICE: THE BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS (2014) [hereinafter FAITH AND PRACTICE 2014]. The book’s title was “Book of Discipline” until the 1940s, when it was renamed “Faith and Practice.” See *infra* note 156 and accompanying text. Its function was unchanged through the retitling.

28. FAITH AND PRACTICE 2014, *supra* note 27, at 12.

29. *Id.* at 30.

30. *Id.* at 34.

31. *Id.* at 36.

32. *Id.* at 47.

33. *Id.* at 50.

other scripture-based Quaker traditions underlie Quakers' historical practice of encouraging extra-legal resolution of conflicts among members of the Society. And the source of authority in that regard is the local monthly meeting.

The monthly meeting has always been recognized as the core of faith-based authority among Quakers.³⁴ Quarterly and Yearly Meetings promulgate rules for the process and articulate principles of tradition and religious testimony; however they do not offer statements of creed binding subordinate religious communities, in the manner of more hierarchical religious organizations that are headed by an ultimate spiritual authority such as a Pope or a Patriarch.³⁵ Rather, the regional Quaker bodies are organized in order to encourage inter-visitation among the smaller ones; create opportunities for broader fellowship than would otherwise be available; promulgate statements or public letters with respect to Quaker positions in matters of social concern; and (to some degree) identify monthly meetings whose practices are inconsistent with the traditions of the Society as a whole, and whose conduct risks bringing obloquy or disrepute upon other Friends.³⁶ Thus is formed the "pyramidal structure of . . . Preparative Meetings, many Monthly Meetings, several Quarterly Meetings, culminated in a single Yearly Meeting,"³⁷ each named for the frequency with which it met to conduct business and with only a limited suggestion of progressive or hierarchical authority.

As the core organization of a Religious Society, then, it is the monthly meeting that is the basic "covenant community," with special relationships to each other and to the divine. The term "covenant" is fraught with resonance, used in Judeo-Christian scripture to define the primal relationships between God and Man.³⁸ The

34. See, e.g., FAITH AND PRACTICE 2014, *supra* note 27, at 96 ("The basic unit of the Religious Society of Friends is the monthly meeting."). See also QUAKER FAITH & PRACTICE § 4.01 (2005) ("The monthly meeting is the primary meeting for church affairs in Britain Yearly Meeting.").

35. The current Book of Discipline for New York Yearly Meeting disavows any authority whatsoever of the yearly meeting over its constituent monthly meetings: "The yearly meeting exists principally to worship together." FAITH AND PRACTICE 2014, *supra* note 27, at 103. At the same time, however, the Yearly Meeting "alone has authority to establish or change the Book of Discipline, or to issue statements of faith." *Id.*

36. The first instance of convening a group of monthly meetings was the assembly of the Elders at Balby, near Doncaster, England, in 1656. That Assembly promulgated written "advices," rather than rules, to detail the principles of the Society of Friends. Of particular interest is the guidance – derived from Matthew 18 – that "Persons who walk disorderly are to be spoken to in private, then before two or three witnesses; then, if necessary, the matter is to be reported to the Church. The Church is to reprove them for their disorderly walking..." *Id.* at 77. Still, the Elders at Balby cautioned that "these things we do not lay upon you as a rule or form to walk by, but that all... may be guided: ...for the letter killeth, but the Spirit giveth life." *Id.* at 79.

37. SIDNEY LUCAS, THE QUAKER STORY 43 (1949).

38. See, e.g., *Genesis* 9:1-17 (God covenants with Noah, "and with your seed after you; and with every living creature that is with you... and every beast of the earth" that "neither shall all flesh be cut off any more by the waters of a flood"); *Genesis* 17:6-8 (God covenants with Abraham that God shall "make thee exceeding fruitful, and I will make nations of thee, and kings shall come out of thee.... And I will give unto thee, and to thy seed after thee, the land of Canaan, for an everlasting possession; and I will be their God"); *Exodus* 20 1-3 (God demands covenantal recognition as the one "which brought thee out of the land of Egypt"); *Jeremiah* 31:31-34 (prophesying that the Lord "will make a new covenant with the house of Israel... not according to the covenant which I made with their fathers, the day I took them out of the land of Egypt... [but instead] I will put my law in their inward parts, and write it in their heart"); *Matthew* 26:28 ("for this is the blood of the new testament"); *Luke* 22:20 (Jesus offering wine as a symbol of "the new covenant"); 2 *Corinthians* 3:6 (referring to early Christians as "ministers of a new covenant").

weighty concept of “covenant” is intentionally³⁹ and inextricably linked with the Quaker concept of “gospel order”:

Friends’ understanding of the monthly meeting as covenant community is that in the Gospel Order, God is calling individuals to live in covenant with Him and through that covenant in community with one another. . . . Because of the covenant relationship we have with God through Christ we are enabled and equipped to live together as human beings in a way that witnesses to his relationship with us and serves as an outpost of the Kingdom of God on earth.⁴⁰

Moreover, this covenant relationship imposes consequences upon a chronically disputatious community. “How people dispute is, after all, a function of how (and whether) they relate. In relationships that are intimate, caring, and mutual, disputants will behave quite differently from their counterparts who are strangers and competitors.”⁴¹

Closely tied to the concept of Friends’ living in communities that are covenanted is the precept that such communities should be harmonious. “Gospel order” presupposes a harmonious state—the “ability, as a result of their inner transformation, to live in harmony with all aspects of the divine creation: [with] people as well as [with] the natural world.”⁴² It can be acknowledged that disharmony within the community is inevitable, while simultaneously accepting the religiously-inspired obligation conscientiously to address and promptly to resolve such conflicts. Writ large, the implications of harmony in “gospel order” culminate in the famous Quaker Peace Testimony,⁴³ pursuant to which Friends have conscientiously objected to participation in organized conflict—that is, war—for centuries.

Thus, “gospel order” facilitates (or predicates?) three dimensions of rigor: an individual’s covenantal relationship with God; the proper and harmonious functioning of the core units of the church and the home; and the outward and prophetic social testimonies of Friends, such as those pertaining to non-violence and social equality.⁴⁴ As early as 1692, the Rules of Discipline for Quakers in Pennsylvania and West New Jersey expressly advised that “gospel order was to be the primary means of dispute resolution within the Quaker community because of its emphasis on peacemaking.”⁴⁵ If Friends availed themselves of the civil courts, “they were

39. CRONK, *supra* note 15, at 5.

40. WILSON, *supra* note 10, at 61.

41. JEROLD S. AUERBACH, JUSTICE WITHOUT LAW? RESOLVING DISPUTES WITHOUT LAWYERS 7 (1983).

42. WILSON, *supra* note 10, at 165.

43. In an effort to defuse any suspicion of association with radical political elements, and relying on the teaching in *James* 4:1-2 that war proceeded “from the lusts of men,” George Fox and his colleagues assured King Charles II in 1661 that “the spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move us unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the Kingdom of Christ, nor for the kingdoms of this world.” PETER BROCK, THE QUAKER PEACE TESTIMONY 1660 TO 1914 24-26 (1990). “Hence-forward pacifism became a hallmark of Quakerism, and for the next two centuries and more the nonpacifist Friend was the exception....” *Id.* at 25-26.

44. See generally CRONK, *supra* note 15, at 9-13.

45. SAGAFI-NEJAD, *supra* note 7, at 178.

considered to have departed from the principle of truth, and they risked disownment if they did not quickly discontinue the suit.”⁴⁶

Moreover, the virtue of social harmony, and the central importance of respectful communities, were recognized by Colonial American towns as a matter of secular pragmatism, quite independent of articles of religious faith, much less Quaker “gospel order.”⁴⁷ Particularly in Colonial America, there were few advantages to community conflict, or to individual assertiveness in deviation from community norms. “Conflict could only weaken the fragile foundations of unity and harmony that supported [communities’] existence. The new settlements were too precarious physically, and too enclosed ideologically, for open conflict to be easily accepted.”⁴⁸ Thus, there was a strong incentive for all political and social bodies, not just religious ones, to identify and resolve conflicts with both consistency and alacrity.

Nor was the intervention of lawyers approved, reflecting a predisposition that was not limited by—or even connected with—Quaker practice. “Legal dispute settlement was explicitly discouraged. To sue a fellow church member, according to the Reverend John Cotton, was ‘a defect of brotherly love.’”⁴⁹ Indeed, arbitration played precisely this role: “By order of a Boston town meeting in 1635, no congregation members could litigate unless there had been a prior effort at arbitration.”⁵⁰ And in 1768, the New York Chamber of Commerce established the first private means of extra-judicial settlement of commercial disputes, observing that “All controversies are antagonistic to commerce.”⁵¹

The distrust of lawyers that was broadly observed in the 17th and 18th centuries did, however, obtain a particular piquancy in a Quaker context. Quaker James Naylor wrote that those learned in the law should “instruct people in the ways of truth and peace,” but instead “declare in bills, things that are not true, and make small offences seem very great by false glosses.”⁵²

Some contemporary American civil offices derive from Quaker doctrine of “gospel order” and Quaker practices of civil dispute resolution. For example, Friends asserted in a broad civil context in such colonies as Pennsylvania that civil peace was “the state of orderly living” and, “on a local level, they were successful

46. *Id.* at 178-79. See FREDERICK B. TOLLES, MEETING HOUSE AND COUNTING HOUSE: THE QUAKER MERCHANTS OF COLONIAL PHILADELPHIA 1682 – 1763 75-80 & 251-52 (1948) (providing a general overview of this practice of 18th century American Quakers’ disavowing judicial resolution of secular disputes).

47. Margo Todd, ‘For eschewing of trouble and exorbitant expense’: Arbitration in the Early Modern British Isles, 2016 J. Disp. Resol. 8.

48. AUERBACH, *supra* note 41, at 20.

49. *Id.* at 23. John Cotton (1584-1652) was an accomplished English theologian who emigrated to become teacher at the First Church of Boston and was highly influential in the establishment of Congregationalism. See generally *Biography: John Cotton*, THE MATHER PROJECT, <http://matherproject.org/node/51> (last visited Feb. 7, 2016).

50. AUERBACH, *supra* note 41, at 23. Philadelphia Meeting approved the first of several minutes to the same effect in 1685, decreeing that “Friends should not go to law until an attempt had been made by the meeting to settle the dispute.” George S. Odiorne, *Arbitration and Mediation Among Early Quakers*, 9 ARBIT. J. 161, 165 (1954). See also MICHNER, *infra* note 80, at 266-71 (collecting minutes to the same effect by Thirdhaven Monthly Meeting (1679), Burlington Monthly Meeting (1681), Philadelphia Yearly Meeting (1710), as well as a detailed procedure for Friends seeking resolution of claims against each other and against non-Friends, approved by Philadelphia Yearly Meeting in 1719).

51. AUERBACH, *supra* note 41, at 33.

52. SAGAFI-NEJAD, *supra* note 7, at 183 (quoting James Naylor, *A Call to Magistrates, Ministers, Lawyers, and People to Repentance*, in COLLECTION OF SUNDRY BOOKS, EPISTLES 166 (1829)).

in assigning trusted persons to be ‘justices of the peace’ to resolve conflicts.”⁵³ Moreover, there is strong evidence that, at least in New Jersey, statutes supporting extra-judicial dispute resolution were intentionally modeled to incorporate and reflect Quaker practices.⁵⁴

IV. QUAKER ARBITRATION AS TAUGHT AND PRACTICED

A. *The Book of Discipline of New York Yearly Meeting*

“Quakers were warned against being litigious and appealing to the civil courts with their disputes. Instead, their meetings tended to reconcile differences among members.”⁵⁵ The means by which such instruction was conveyed was the Book of Discipline promulgated by the various Yearly Meetings of the Religious Society of Friends.

The London Yearly Meeting set the model of both principle and procedure during the first century of the development of the Society of Friends.⁵⁶ In 1692 London Yearly Meeting “advised, that in all cases of controversy and difference, the persons concerned therein, either speedily compose the difference between themselves, or make choice of some faithful unconcerned friends to determine the same, and they to stand by their determination.”⁵⁷ In 1696, it “advised, that no friends shall go from the order of truth, and former advice, to sue one another at law.”⁵⁸

The advice concerning arbitration approved by the London Yearly Meeting in 1697⁵⁹ remained substantially unaltered for centuries. In 1782, the London Yearly Meeting approved a “method” by which arbitrations should be conducted (appearing as Appendix I to this article).⁶⁰ These reflected, among other concerns, the requirement set forth a century earlier that the arbitrators be impartial. They “should not consider themselves as advocates for the party by whom they were chosen, but men, whose incumbent duty it is to judge righteously, fearing the Lord.”⁶¹ The standard upon which decisions should be made was not, however, necessarily based on secular law. Though the arbitrators may consult counsel to determine what the law is, they “are not required to express in the award their reasons for their decision.”⁶² Rules of evidence were also dispensed with: “Let no evidence or witness be withheld or rejected.”⁶³

The 1810 edition of the New York Yearly Meeting Book of Discipline featured a section titled “Differences and Arbitrations” that, with very few changes, persisted

53. DAVID YOUNT, *HOW THE QUAKERS INVENTED AMERICA* 13 (2007).

54. Carli N. Conklin, *Transformed, Not Transcended: The Role of Extrajudicial Dispute Resolution in Antebellum Kentucky and New Jersey*, 48 AMER. J. LEGAL HIST. 39, 79-96 (2006).

55. YOUNT, *supra* note 53, at 13.

56. See EXTRACTS FROM THE MINUTES AND ADVICES OF THE YEARLY MEETING OF FRIENDS HELD IN LONDON, FROM ITS FIRST INSTITUTION 7-12 (1803) [hereinafter EXTRACTS FROM LONDON] (providing examples).

57. *Id.* at 7.

58. *Id.*

59. *Id.* at 9.

60. *Id.* at 11-12.

61. *Id.* at 11.

62. EXTRACTS FROM LONDON, *supra* note 56, at 11.

63. *Id.*

for the next 120 years.⁶⁴ The full text of this section appears as Appendix II to this article. The 1810 passage set forth New York Yearly Meeting's continuing guidance for monthly meetings with respect to the appropriate methods of resolving "differences [that] arise between any member of our society, about temporal concerns."⁶⁵ The section referred to the "ancient and comely order" pursuant to which "brother ought not to go to law with brother, except from apparent and urgent necessity," but rather engage in "gospel order"—that is, communicate directly with each other; and if that does not avail then accompanied by others; then to preparative meeting; then "submit it to arbitration" before the monthly meeting.⁶⁶

The following provision is of particular interest: "The first proceeding of the monthly meeting should be to inquire whether the beforementioned gospel order has been duly observed; and if it has not, the complainant is to be referred back to the preparative meeting, and no notice of the subject taken on minute . . ." This emphasizes the importance, to Friends, that the process be followed, not as a matter of procedural nicety, but because efforts to resolve issues early and directly are salutary in and of themselves, and the process of direct communication is more important than the terms on which a particular dispute is settled.

It is also noteworthy that, if

it should appear notoriously evident, that the arbitrators have materially erred in their judgment, or proceedings, or have not given sufficient opportunity of producing the necessary evidence in the case . . . the quarterly meeting should be informed . . . and the quarterly meeting is to form a committee to sit with, and assist the monthly meeting therein; and should it appear, on mature consideration, that there is cause for dissatisfaction, a rehearing is to be granted by the same, or other arbitrators, and their award shall be final.⁶⁷

This process—less of an appeal on the merits and more of a review for procedural integrity—was eventually reflected in the United States in the Federal Arbitration Act, which contemplates judicial review of arbitral awards for grounds of procedural—but not substantive—flaw.⁶⁸

These directions continued unchanged except for style for a century.⁶⁹ The relevant passage of the 1872 edition of the New York Yearly Meeting Book of Discipline opens with the clear warning: "According to ancient and comely order,

64. DISCIPLINE OF THE YEARLY MEETING OF FRIENDS, HELD IN NEW YORK, FOR THE STATE OF NEW YORK, AND PARTS ADJACENT 90 (1810) [hereinafter NEW YORK YEARLY MEETING 1810].

65. *Id.*

66. *Id.* at 90-91.

67. *Id.* at 92.

68. 9 U.S.C. §10 (2012). The Federal Arbitration Act affords judicial review of arbitration awards on largely procedural grounds. A reviewing court may vacate an award (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators; (3) where the arbitrators engaged in misbehavior whereby the rights of any party to a fair hearing were prejudiced; or (4) where the arbitrators exceeded, or imperfectly executed, their powers to the degree that a final award upon the subject submitted was not made. *Id.* Courts are highly deferential to the substantive findings in arbitral awards. *See, e.g.,* BG Group PLC v. Republic of Argentina, 134 S.Ct. 1198, 1221 (2014) (stating judicial review is highly deferential).

69. QUAKER HERITAGE PRESS, THE OLD DISCIPLINE NINETEENTH-CENTURY FRIENDS' DISCIPLINES IN AMERICA, 397-400 (1999) (collecting the stylistic modifications during this period).

brother ought not to go to law with brother”⁷⁰ The 1890 edition starts, “According to Gospel order, enjoined in Scripture, brother ought not to go to law with brother”⁷¹ The 1893 edition conforms to the 1872 language, as does the 1915 edition.⁷² The 1930 edition is substantively unchanged, though greatly abbreviated.⁷³

B. Examples of Quaker Arbitrations

Quakers did appear as plaintiffs and defendants in Colonial American courts.⁷⁴ However, “[m]any of the earliest cases involving American Friends are notable primarily because they were brought despite the scriptural admonition against doing so.”⁷⁵

An early example of an action taken by a monthly meeting with respect to a meeting’s granting a member permission to resort to law may be found in the minutes⁷⁶ of Flushing Meeting on May 25, 1700.⁷⁷ There a dispute involving funds held by non-Quakers was dealt with as follows:

The friends Entrusted for Recovery of Collo Wests Legacy to the Poore of friends in London; having desired fronds of this Meeting to give advice therein: This Meeting thot fit that the Said Legacy may be Sued for by Law, Except Miles Forster Shall Submitt to a reference for the same,⁷⁸ also

70. DISCIPLINE OF THE YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS HELD IN NEW YORK, FOR THE STATE OF NEW YORK, AND PARTS ADJACENT 79 (1872) [hereinafter NEW YORK YEARLY MEETING 1872].

71. DISCIPLINE OF THE SOCIETY OF FRIENDS OF NEW YORK YEARLY MEETING 118 (1890) [hereinafter NEW YORK YEARLY MEETING 1890].

72. Compare NEW YORK YEARLY MEETING 1872, *supra* note 70, at 79, with DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 84 (1893) [hereinafter NEW YORK YEARLY MEETING 1893]; and DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 72 (1915) [hereinafter NEW YORK YEARLY MEETING 1915].

73. BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 63 (1930) [hereinafter NEW YORK YEARLY MEETING 1930].

74. SAGAFI-NEJAD, *supra* note 7, at 71.

75. *Id.*

76. A “minute” is a recording of an action of a meeting, in the course of its monthly Meeting for Worship with a Concern for Business. When, upon consideration of an action by Friends present, “a reasonable degree of unity has been obtained, the clerk announces what he believes to be the sense of the meeting. If the meeting agrees with [the clerk’s] wording as given or revised, this becomes the judgment of the meeting and is so preserved in the minutes.” BRINTON & BACON, *supra* note 1, at 130. Quakers do not conduct business by majority vote, but by collective discernment of divine will. See generally MICHAEL J. SHEERAN, BEYOND MAJORITY RULE: VOTELESS DECISIONS IN THE RELIGIOUS SOCIETY OF FRIENDS (1983) (discussing the Quaker practice of allowing religious leadings to determine corporate action based on divine authority, rather than the secular practice of allowing voting to determine corporate action based on secular authority).

77. THE PEOPLE CALLED QUAKERS: RECORDS OF LONG ISLAND FRIENDS 1671-1703, at 92-93, 96-97 (Nathalie A. Naylor ed., 2001) (providing examples).

78. The process of “submitting to reference” is distinguished from arbitration “in that the latter word imports submission of a controversy without any lawsuit having been brought, while ‘reference’ imports a lawsuit pending, and an issue framed or a question raised which is sent out” to a referee, master or auditor. BLACK’S LAW DICTIONARY 1151 (5th ed. 1979). The direction to “submit to reference” is found in the earliest version of the New York Yearly Meeting’s Book of Discipline, which instructed that Quakers “ought to give no just cause for others to go to law with them,” but in the event that they find themselves subject to a demand to which they have cause to object, “they should shew a readiness

that Two friends be appointed to Continue the Demand of Collo Morris his Legacy unto friends of his Meeting, and that Thoms Stevenson and Samuell Hoyt be the persons to Demand.⁷⁹

Another example may be found in the minutes of Thirdhaven Monthly Meeting in 1756:

Isaac Williams requests that this meeting grants him liberty to seek methods, as the law directs, for the recovery of some small debts, that he has due to him from sundry persons who are not Friends; which this meeting grants.⁸⁰

An internal dispute was considered on July 5 of the same year as follows:

Whereas there hath been a difference between Samuell Hoyt and Daniell Kirk Patrick which they cannot end between themselves and the said Samuell Hoyt has presented it to this meeting and they have both left it to friends of this meeting to make a final end of the difference and doe promise to be fully Satisfied with friends determination and this meeting has appointed Thomas Stevenson, Roabord field, Nathaniell Persel, and Richard Willitts to determine Same.⁸¹

A month later it was minuted:

Thomas Stevens Reports at this meeting that the matter in difference Relating to Samuell Hait and Daniel Kirk Patrick is by Joint Consent left Untill the faull of the Yere for a final Issew and determination.⁸²

Soon after, a different conflict involving one of the parties arose. On August 7, 1701, an arbitration panel of 12 names was assembled pursuant to this minute:

Daniel Kirkpatrick [report]ed at this meeting that Thear [wa]ss Sum Deference Relating to their outward affaires between Thomas hedger and himselfe and the parties above named have This day agreed to put all Such Defferens to be arbitrated and aJudged to the Friends hereafter named by the Concent and abrobation of both parties.⁸³

The panel reported on November 29, 1701:

Whereas there hath been a Differnce of a Long time Depending between Thomas Hedger of the one party and Daniell Kirkpatrick, both belonging to this Meeting which was, by Consent of Both Parties at the Monthly

to settle it between themselves, or submit it to reference.” NEW YORK YEARLY MEETING 1810, *supra* note 64, at 93-94.

79. THE PEOPLE CALLED QUAKERS, *supra* note 77, at 92-93, 96-97.

80. EZRA MICHNER, A RETROSPECT OF EARLY QUAKERISM 271 (1860).

81. THE PEOPLE CALLED QUAKERS, *supra* note 77, at 93.

82. *Id.*

83. *Id.* at 97.

Meeting held here on the 7 day 6 month {August} Last, to the Arbittirmnt and Descision of Hugh CowPthwait, Robert Field, John Rodman, Thomas Stevenson, William Bickley, John Way, Samuel Brown, George Langly, John Farrington, William Willes, Frances Doughty, and Benjamin Haviland to End and Determin the Same, the which: being Endeavored by the Said Arbittrators, the Said Parties, vizt. Daniell Kirkpatrick and Thomas Hedger, Did freely voluntary and Lovingly acquit Each other, and further that wherein they had don amiss for the time Past, they would Endeavor to Do So No more, in Testimony whereof they have here unto set their hands the Day above Written.⁸⁴

Records of meetings within Philadelphia Yearly Meeting include the following from New Garden Monthly Meeting in 1734:⁸⁵

Leacock Preparative Meeting acquainted this meeting that there is some difference between J--- S--- and his brother J---. They both now appearing here, were advised to choose arbitrators to refer their business to, which they did; and the Friends they chose were Joseph Sharp, Simon Hadley, William Miller, and Benjamin Fredd, which are desired to give account of their proceedings to our next meeting. They are bound by bonds to stand by the award of the Friends. They have agreed, and given each of them a copy of their award under their hands and seals.⁸⁶

Two unidentified 18th century instances of arbitration are cited by George Ordione:

There was a complaint brought up that a friend refuses to fulfill a promise he made two years ago respecting performing his proportion of the work on the high-ways, therefore in consequences of said complaint we do appoint John Gifford, Benjamin Tripp, and Peleg Huddlestone to inspect into said complaint and if they find the friend refused to fulfil said promise agreeable to said complaint, to labor with said friend to fulfil it, so that truth and the professors thereof may not suffer on that account any longer.

There was brought a complaint to this meeting against a friend for refusing to come to a settlement in a division of a fence in the line between him and another friend, therefore we do appoint Nicholas Haviland and James Soule to labor with said friend to do what they shall think reasonable in the case after they have informed themselves the circumstances thereof.⁸⁷

84. *Id.* at 99.

85. MICHNER, *supra* note 80, at 271.

86. *Id.*

87. Odiome, *supra* note 50, at 163.

C. Enforcement of Quaker Arbitration Awards

The determinations of the Quaker arbitral panel were beyond dispute, as was the request/demand that a member of the monthly meeting submit a matter to arbitration. A challenge to either constituted a departure from “gospel order” itself.

[R]efusal to abide by their judgment was an intolerable affront to the entire community. “Such person must be dealt with as one disorderly, and that regards not peace either in himself or in the church and that slights the love, order, and unity of the Brethren.” The penalty was disownment by the society. Only after disownment could an ex-Friend pursue a remedy at law.⁸⁸

Arbitration awards were also published within the Society, creating not only strong incentives to settle prior to arbitration, but also immediate incentives not to disregard the awards once issued. “Part of the efficacy of [publication] within the Society was the assurance that the meeting’s decisions would be enforced through the threat, and possible imposition, of sanctions.”⁸⁹

This method of enforcement—by threat of disassociation, rather than legal coercion—seems to be a vestige of the way medieval guilds operated.⁹⁰ Membership in such guilds was (as a practical matter) mandatory to practice a craft.⁹¹ Adherence to the Guild’s standards was a necessary qualification for continued inclusion as a member.⁹² A shoemaker had no chance of maintaining his craft if he were not part of the shoemaker’s Guild, and the threat of exclusion from the Guild was therefore more meaningful than entry of a court judgment would be today.⁹³ This kind of “self-enforcement” is still evident in certain mercantile or commercial industries, whose standards of conduct are enforceable without resort to court, because being expelled from the organization is, as a practical matter, unthinkable.⁹⁴

Challenges to Quaker arbitration awards nevertheless occurred:

Whereas O--- J---, a member of this meeting, hath, contrary to the good order and discipline used among us for the reconciling of our differing members, refused the leaving of a certain controversy between him and the executors of Moses Mendenhall, deceased, to be decided by arbitrators, and also refuseth to comply with the judgment of those Friends appointed

88. AUERBACH, *supra* note 41, at 29-30 (quoting MICHNER, *supra* note 80, at 271). See also Odiome, *supra* note 50, at 163 (“The penalty already existed, in that failure to comply would mean expulsion from the society.”).

89. SAGAFI-NEJAD, *supra* note 7, at 180.

90. See generally Earl S. Wolaver, *The Historical Background of Commercial Arbitration*, 83 U. PENN. L. REV. 132 (Dec. 1934) (discussing the practice of arbitration as a method of maintaining the economic health of craft guilds).

91. *Id.* at 133-135.

92. *Id.*

93. *Id.*

94. See, e.g., *Code of Credits – Rules Governing Arbitration*, PRODUCERS GUILD OF AMERICA, http://www.producersguild.org/?page=coc_rga (last visited Feb. 15, 2016). See also *Sideletter Re: Arbitration of Disputes Concerning Tri-Guild Residuals Audits*, DIRECTORS GUILD OF AMERICA (2011), <http://www.dga.org/~media/Files/Contracts/Agreements/2011FLT-TAsc/059FLTTA2011sideletter017.pdf> (providing procedure for arbitration of disputes arising from audits of film revenues).

by this meeting in the case, notwithstanding he hath been several times visited in order to prevail with him to comply with the advice of said Friends, but those labors of love not in any way prevailing with him to submit to our rules; therefore this meeting doth declare him, the said O--- J---, to be no member of our religious Society, until he, from a sense of his error, do make such an acknowledgement as may be to the satisfaction of this meeting.⁹⁵

“Disownment” as the consequence of an individual’s refusal of the meeting’s decision had particular meaning to contemporaneous Quakers. The absence of changed behavior, and the absence of repentance, were signs that the individual was not part of—because *he did not wish to be part of*—the covenant relationship that the meeting’s members had to God and to each other. The recalcitrant person’s relationship of love and trust to fellow worshippers had been rendered nugatory.⁹⁶ The disownment did not cut the individual off from society; he could still attend worship and take part in social gatherings.⁹⁷ But the act of disownment acknowledged the severance of a fundamental covenantal commitment—a person with whom efforts at reconciliation had failed, and with whom mutual accountability was no longer a viable dynamic.⁹⁸

V. THE DISUSE OF ARBITRATION IN THE TWENTIETH CENTURY

A. *The Book of Discipline Drops Arbitration*

During the 19th century the Society of Friends was confronted with serious challenges to unity—some of them going to the heart of the organizational structure of the Society, others to the tension between the two fundamental testimonies of Non-Violence and Equality. These severely disrupted the Quaker movement and resulted in a more marginal, less coherent, and less influential group. In none of these instances was arbitration of disputes even remotely considered, leading to two possible conclusions: Either the tradition of arbitration was limited to disputes involving secular (“temporal”)⁹⁹ rather than dogmatic issues, or the Society gradually lost the social cohesion that (this essay argues) is a necessary attribute of private dispute resolution.

The first and most divisive event was the Hicksite Separation. In the early 19th century, many leaders of the influential eastern yearly meetings (New England, New York and Philadelphia) were strong advocates of the Evangelical movement that was then advanced by Methodists and other Protestant branches.¹⁰⁰ These leaders adhered to assumptions of the Fall of Man, Original Sin, and the agency of Jesus Christ as man’s redeemer through suffering.¹⁰¹ These Evangelical Quakers provoked dissent among other less powerful Friends, including a Quaker minister

95. MICHNER, *supra* note 80, at 271-72 (discussing the minutes of Concord Monthly Meeting, 1735).

96. CRONK, *supra* note 15, at 30-31.

97. *Id.* at 30.

98. *Id.*

99. *See infra* Appendix II.

100. *See* LUCAS, *supra* note 37, at 106.

101. *Id.*

from Long Island named Elias Hicks. Hicks was a Quietist¹⁰² who preached that the individual experience of the Inward Light, not the external mandate from written scripture, was the primal source of divine revelation.¹⁰³ Hicks' travels to monthly meetings in the northeast United States attracted not only like-minded religious thinkers, but also dissidents who were predisposed to rebel against the superiority, authoritarianism, and social arrogance of contemporaneous Quaker leaders.¹⁰⁴

Small slights rapidly became large ones, and conflicts among Friends developed into institutional factionalism.¹⁰⁵ In 1819, Hicks spoke to the men's Monthly Meeting in Philadelphia; that body dispersed while he was visiting with the women, rather than remaining to listen once he returned.¹⁰⁶ The inevitability of institutional schism was illustrated by incidents of near violence:

In September [1827] at Rose Street Meeting [in New York City], a young man requested a certificate of transfer to Green Street Meeting and thereby provoked a real donnybrook. To grant the request, the evangelicals reiterated, would amount to doing business with a disorderly meeting – not to do so, responded the Hicksites, would be to turn against a great body of Friends. The clerk . . . refused to make the minute, and a tug-of-war commenced over the minute books. Upon losing the struggle, the Hicksites procured some loose sheets of paper, made their minute, and adjourned, leaving the Orthodox behind to complete what they claimed was the real business of the meeting. In Cornwall Quarter . . . discussion of appropriate answers to the queries had the same affect, with “tolerants,” as the reformers sometimes styled themselves, sending up one set of answers, the Orthodox another.¹⁰⁷

The division spread to other yearly meetings, and during 1827-28 rival “Orthodox” and “Hicksite” yearly meetings were created in New York, Ohio, Philadelphia, Indiana, and Baltimore.¹⁰⁸ The split was distinctly social in nature; “generally orthodox-Christian, elder-supporting, richer, urban Friends on one side and Inward-Light-oriented, elder-questioning, less-well-off, rural ones on the other who acrimoniously and resentfully opposed each other.”¹⁰⁹ New York Yearly Meeting remained divided until the reconciliation of 1955.¹¹⁰ Each of the Hicksite and Orthodox yearly meetings promulgated separate Books of Discipline, but the provisions

102. Quietism is a term – initially derogatory – referring to a school of Christian philosophy holding that truth is discovered by contemplation, personal annihilation, and mystical absorption into the soul of the Divine. See RUSSELL, *supra* note 1, at 229-34.

103. H. LARRY INGLE, *QUAKERS IN CONFLICT: THE HICKSITE REFORMATION* 40-42 (1998).

104. See generally *id.* (narrating the rise of Evangelicalism within Quaker meetings, the social nature of the “reformist” reaction, and the passionate conflicts that ensued).

105. See JAMES COCKBURN, *A REVIEW OF THE GENERAL AND PARTICULAR CAUSES WHICH HAVE PRODUCED THE LATE DISORDERS AND DIVISIONS IN THE YEARLY MEETING OF FRIENDS, HELD IN PHILADELPHIA* 53 – 80 (1829) (providing a particularly vituperative account of the attacks that Hicks endured during his attempts to visit monthly meetings in Philadelphia). Nor was Hicks, apparently, beyond creating obstacles to his own success. “He evinced a kind of cocksureness that easily shaded over into censoriousness of people who disagreed with him.” INGLE, *supra* note 103, at 227.

106. LUCAS, *supra* note 37, at 112.

107. *Id.* at 229.

108. FAITH AND PRACTICE 2014, *supra* note 27, at 69.

109. *Id.*

110. *Id.* at 75-76. See also INGLE, *supra* note 103, at 250.

in each regarding arbitration were substantively identical until the late 19th century.¹¹¹

A second challenge presented itself to individual Quakers rather than Quaker institutional structure, but precipitated many Friends' departure from the guidance of their meetings. The American Civil War, and the introduction of forced conscription in the North, presented serious religious challenges to American Quakers.¹¹² For decades prior to the war's breaking out in 1861, American Quakers had almost uniformly testified against slavery as an abomination.¹¹³ Prominent Friends such as Lucretia Mott and John Greenleaf Whittier viewed the American Civil War as an opportunity to achieve emancipation and vindicate the testimony of equality.¹¹⁴ Others voiced concern that the general Quaker testimony against war should not be modified or qualified because of sympathy with the social and political issues giving rise to this particular one.¹¹⁵ The issue came to a head in March 1863, when universal military service was imposed, allowing for men thus conscripted to furnish a substitute or to pay \$300. Drafted Quakers needed to decide whether to pay the \$300.¹¹⁶ Meetings in which such men were members needed to decide whether to reimburse those men in support of their refusal to join the war.¹¹⁷ And the issue was stark: "We may presume that normally the Quaker conscript, even if his father had supplied him with the cash, knew exactly what he was doing when he paid over his \$300."¹¹⁸ And both Hicksite and Orthodox meetings were confronted with the decision whether to disown a member who had "joined up in the crusade against disunion and the slave power" and were "following their Inner Light as it appeared to them."¹¹⁹ In the face of such a profound religious dilemma involving immediate issues of obedience and unity within monthly meetings, there is no record of arbitration being used to address these conflicts.

By the eve of the 20th century, the Society of Friends had developed into a less doctrinaire, less dogmatic, more inclusive organization than it had been for the first two and a half centuries of its existence. This shift either reflected a change in culture within Quaker meetings, or else precipitated it. Incidents that would, in earlier years, have prompted formal disciplinary processes were now dealt with in a more tolerant, less certain manner.

For example, in April 1902, in response to a Query promulgated by New York Yearly Meeting, Brooklyn Preparatory Meeting minuted that, "with two known exceptions, where some care has been extended, we believe love and unity are maintained. We trust that tale-bearing and detraction are avoided and discouraged."¹²⁰ This attitudinal shift away from disciplinary enforcement and towards collaborative

111. See *infra* notes 126 and 135 and accompanying text.

112. See generally PETER BROCK, *THE QUAKER PEACE TESTIMONY 1660 TO 1914* at 166-83 (1990) (summarizing the tensions surrounding conscientious objection by Quakers during the American Civil War).

113. *Id.* at 166.

114. *Id.* at 167.

115. *Id.* at 168.

116. *Id.* at 169.

117. *Id.* at 169-70.

118. BROCK, *supra* note 112, at 171.

119. *Id.* at 179.

120. Minutes from Brooklyn Preparatory Meeting (Apr. 5, 1902) (maintained at the collections of Friends Historical Library of Swarthmore College).

encouragement and labor is also noted in the minutes of New York Preparative Meeting in 1915:

We believe that love and unity are maintained, and no cases of differences have demanded the attention of the Meeting . . . We believe our Friends generally avoid the use of intoxicating liquors . . . and refrain from attending places of amusement of a hurtful tendency. What are hurtful amusements is somewhat of an individual opinion and each member must judge for himself in that respect.¹²¹

A note of subjectivity with respect to Quaker practice enters into the workings of meetings in the early 20th century, as Friends spend less time ensuring that members adhere to the discipline of the Society, and instead inquire into what that discipline means, and how it should guide the behavior of those in the religious community. Brooklyn meeting noted in 1918 that it “stood in very great need of the unique spirit of loving tolerance” required in light of the fact that, “in this world crisis, our members have set their hopes upon very different paths, and for a time the sharp diversity of these was a matter of grave concern,” that was alleviated only by a recognition of “the things that bring us together in service, rather than those that separate us in fruitless argument and ill feeling.”¹²²

These subjective inquiries, and the accompanying value placed on “tolerance” rather than adherence to rule, extended to questioning even the form and content of worship, and eventually internal conflicts began to infect the body as a consequence, implicating the core traditions of the Society itself:

There is much of love and unity among us, but in the conduct of our meetings they do not seem to be so joined as to make for complete harmony. Some members have expressed themselves as desiring changes in the form of some of our meetings for Worship, with the thought that they would interest them and others more. It would seem that tale-bearing and detraction are words that may convey varying meanings. It may not be with wrong intent that we comment on others to their disadvantage, we may, however, sometimes, give impressions not for the best, where silence or different commendation would serve a better purpose.¹²³

One reason for this shift may have been the precipitous decline of membership in the Society of Friends during this period, as well as the less central role that religious organizations took in the lives of urban Americans generally. New York Preparative Meeting noted in 1916 that “attendance has not been what we would like,” and discerned that the meeting may “need to look more toward the big outside to maintain and increase our attendance.”¹²⁴ Like any organization seeking to stem decline in membership, Quaker meetings were not in a position to place obstacles

121. Report on the Conditions existing in the New York Preparative Meeting (Mar. 5, 1915) (maintained at Friends Historical Library of Swarthmore College).

122. Report on Conditions Brooklyn (Mar. 3, 1918) (maintained at Friends Historical Library of Swarthmore College).

123. Minutes from New York Preparative Meeting (Mar. 5, 1915) (maintained at Friends Historical Library of Swarthmore College).

124. *Id.*

before those who expressed interest in joining, and the decreased emphasis on enforcement of orthodoxy occurred at a time of a decline in the membership of New York Yearly Meeting from about 6,950 in 1880 to about 5,490 in 1920—or about 20 percent over a period of 40 years.¹²⁵

The process by which the practice of arbitration was dropped from American Quaker Books of Discipline has two forks—one charting the revisions made by Orthodox (“Gurneyite”)¹²⁶ Quakers and the other, somewhat more colorful, charting the acts of the more liberal Hicksite meetings. As noted above, each of these groups had separate yearly meetings and, therefore, separate Books of Discipline.

Orthodox yearly meetings, in a conference at Indianapolis in 1892, considered a proposal by Francis Thomas of Indiana Yearly Meeting that a single uniform discipline should be drafted for adoption by all yearly meetings.¹²⁷ In 1897, Rufus Jones of Haverford College and Edmund Stanley of Kansas Yearly Meeting successfully advocated a conference with legislative authority to create one uniform Book of Discipline for all Orthodox yearly meetings.¹²⁸ The draft was accepted by various Yearly Meetings between 1897 and 1902.

New York Yearly Meeting (Orthodox) was one of the first adopters of the Uniform Discipline. Its 1895 edition of the Book of Discipline featured a section on “Differences and Arbitrations” that exactly resembled the provisions of the past two centuries.¹²⁹ However, the uniform “Constitution and Discipline for the American Yearly Meetings,” adopted by New York in 1901, merely empowered Monthly Meetings to disown “Offenders,”¹³⁰ with a right of appeal such decisions to the Quarterly Meeting.¹³¹ Arbitration appeared only in the context of yearly meetings “engag[ing] in the work of advancing the cause of Peace and Arbitration whenever [they] may deem it advisable to do so.”¹³² While adopting the Uniform Discipline, Indiana Yearly Meeting nevertheless retained the practice of refraining from remedies before the courts in favor of internal arbitration, as an “extract from the old Discipline, now proposed for insertion in the Uniform Discipline for Indiana Yearly

125. Email from Christopher Densmore, Friends Historical Library, to F. Peter Phillips (Feb. 9, 2015) (on file with author). These figures are gleaned from Annual Reports of both the Orthodox and Hicksite divisions of New York Yearly Meeting. Membership in American Quaker meetings continues to drop. In the thirty years between 1972 and 2002, total membership declined from 121,380 to 92,786, or 23.5%. *The Present State of Quakerism*, EARLHAM SCH. OF RELIGION, <http://esr.earlham.edu/support/comprehensive-case/the-vine/present-state-of-quakerism> (last visited Mar. 6, 2016). In 2015, New York Yearly Meeting reported a membership of 3,241. NEW YORK YEARLY MEETING YEARBOOK 2015-2016, at 218 (2015).

126. Followers of Joseph Gurney adhered to evangelical and Christian precepts. Yearly Meetings in this category were the precursors to the modern Friends United Meeting. See BRINTON & BACON, *supra* note 1, at 232-34; *A Brief History of the Branches of Friends*, QUAKER INFO. CTR (May 26, 2011) <http://www.quakerinfo.org/quakerism/branches/history>.

127. See generally RUSSELL, *supra* note 1, at 492-94 (1942) (recounting the proceedings in the conference of 1892).

128. *Id.* at 492.

129. DISCIPLINE OF THE SOCIETY OF FRIENDS OF NEW YORK YEARLY MEETING 119-21 (1895). Iowa Yearly Meeting’s 1891 Book of Discipline also provided for arbitration “when differences arise between our members.” IOWA YEARLY MEETING FRIENDS BOOK OF DISCIPLINE 142-44 (1891).

130. CONSTITUTION AND DISCIPLINE FOR THE AMERICAN YEARLY MEETINGS 50-51 (1937).

131. *Id.* at 51.

132. *Id.* at 72.

Meeting.”¹³³ Baltimore Yearly Meeting (Orthodox) also inserted a brief “Appendix” urging members to “endeavor to settle [differences in regard to their property rights] by arbitration, and not go to law.”¹³⁴

The Orthodox yearly meetings aside, the story of the disappearance of arbitration from the Hicksite New York Yearly Meeting’s Book of Discipline starts with Philadelphia Yearly Meeting. Its Rules of Discipline and Advices dated 1918 contained the familiar provision cautioning that a “party who thinks himself aggrieved [should] calmly and kindly ask the other to comply with the demand for settlement.”¹³⁵ That not availing, the request should be repeated, accompanied by “one or two of the overseers.”¹³⁶ The next stage requires the parties to “choose a suitable number of arbitrators . . . [and] abide by their determination.”¹³⁷ And it noted that “[i]t is further earnestly advised that Friends do not go to law, particularly one with another.”¹³⁸

In 1922, however, a committee was formed at Philadelphia Yearly Meeting in response to a “general feeling . . . that the [Book of] Discipline should be largely re-arranged and re-written.”¹³⁹ One concern voiced at the time was that “a new Book of Discipline” should emphasize social concerns “which deal with evils in personal and community life, with race or class problems, with educational, business, national and international questions.”¹⁴⁰ Another was that the document should be amended “to make it still more serviceable by presenting information required for carrying on the work of the Society, in such language and under such arrangements as best to meet present requirements.”¹⁴¹

The contents of Philadelphia’s existing Book of Discipline were then allocated, chapter by chapter, to subcommittees. The section on “Arbitration” was assigned to two subcommittees, named “Life and Conduct” and “Testimonies and Advices.”¹⁴² As these subcommittees began their tasks, it became clear that their attention was elsewhere than the adjudication of disputes.¹⁴³ The “Life and Conduct” subcommittee articulated “broad general principles” by which Friends should be guided, including “Peaceableness, Cheerfulness, Neighborliness, Use of Time, Kindliness” and so on.¹⁴⁴ The subcommittee on “Testimonies and Advices” determined to work together with the subcommittee on “Life and Conduct,” and together they created an outline of testimonies that did not address secular conflicts among

133. DISCIPLINE OF INDIANA YEARLY MEETING OF FRIENDS 132-33 (1916).

134. CONSTITUTION AND DISCIPLINE OF AMERICAN YEARLY MEETINGS OF FRIENDS ADOPTED BY BALTIMORE YEARLY MEETING OF FRIENDS 83 (1901).

135. RULES OF DISCIPLINE AND ADVICES OF THE YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS HELD IN PHILADELPHIA 59 (1918).

136. *Id.*

137. *Id.* at 59-60.

138. *Id.* at 61.

139. Minutes from the Sub-Committee on Plan of Procedure of the Discipline Committee, Philadelphia Yearly Meeting Discipline Committee (July 14, 1922) (maintained at the collections of Friends Historical Library of Swarthmore College).

140. *The Relation of Discipline to Our Social Concerns*, FRIENDS’ INTELLIGENCER 615 (Sept. 30, 1922).

141. *Why We Should Consider Changing Our Discipline*, FRIENDS’ INTELLIGENCER 628 (Oct. 7, 1922).

142. Minutes from Sub-Committee on Life and Conduct, No. 5 (Nov. 28, 1922) (maintained at the collections of Friends Historical Library of Swarthmore College).

143. *Id.*

144. *Id.*

Friends or arbitration at all, except in the context of “Peace.”¹⁴⁵ A later version of the outline substituted the term “Inter-national Relations” for “Peace,” and arbitration was not included at all.¹⁴⁶

At about the same time, Friends’ General Conference¹⁴⁷ created a Committee on Uniform Discipline, which learned of changes previously attempted in Philadelphia, and determined to combine the best material with an aim to proposing a document that could be adopted by the General Conference’s various constituent yearly meetings. It noted that “most of these Yearly Meeting committees are waiting for the results of the work of this committee” when they were scheduled to meet in September 1923.¹⁴⁸ The result, reflected in the 1927 edition of the Philadelphia Yearly Meeting Book of Discipline, contained a section on “Religious Expression,” one on “Principles and Application,” and one on the conduct of “Meetings for Business.”¹⁴⁹ It has no provision for internal conflict resolution generally, or for arbitration specifically.

Meanwhile, the New York Yearly Meeting’s Book of Discipline remained unchanged from the 1930 version, which continued expressly to provide for arbitration of disputes among Friends pursuant to gospel order.¹⁵⁰ However, at the 252nd Session of the New York Yearly Meeting in June 1947, a Committee on Revision of the Discipline reported that it had been formed and was at work.¹⁵¹ Of particular interest was the Committee’s observation that early Disciplines “provided for offenders against the good order of the Society and set forth quite legalistic procedure for handling such offenders.”¹⁵² This practice had given way, reported the Committee, to a practice where “it is left to every individual to register in his own heart and mind as to whether he is fulfilling the requirements as best he can . . .”¹⁵³ It noted that “many of the suggested changes [to the New York Book of Discipline] were already pretty well covered by the Uniform Discipline of the [Friends] General Conference” and determined to pursue only those further revisions as might address the particular needs of New York.¹⁵⁴

The next year the Committee reported that most meetings preferred that the Queries section of the old Book of Discipline be retained rather than revised, and

145. Minutes from Sub-Committee on Testimonies and Advices, (Dec. 9, 1922) (maintained at the collections of Friends Historical Library of Swarthmore College).

146. Minutes from Committees #4 & #5 of Discipline Committee, (Feb. 17, 1923) (maintained at the collections of Friends Historical Library of Swarthmore College).

147. Friends General Conference (FGC) “is an association of regional Quaker organizations primarily in the United States and Canada. Founded in 1900, FGC has grown from a voluntary organization of seven yearly meetings, created to hold a ‘general conference’ every other year, to an association of fourteen yearly meetings, supplemented with regional groups and individual meetings. FGC continues to sponsor an annual Gathering of Friends.” *See About FGC*, FRIENDS GEN. CONF., <http://www.fgc-quaker.org/serve/about-fgc> (last visited Mar. 6, 2016). FGC originated as a service body to Hicksite, rather than Orthodox, yearly meetings. BRINTON & BACON, *supra* note 1, at 238.

148. Minutes from Committee on Uniform Discipline of Friends’ General Conference (May 30, 1923) (maintained at the collections of Friends Historical Library of Swarthmore College).

149. BOOK OF DISCIPLINE OF THE RELIGIOUS SOCIETY OF FRIENDS 3 (1927).

150. *See* NEW YORK YEARLY MEETING 1930, *supra* note 73, at 63.

151. PROCEEDINGS OF THE 252ND SESSION NEW YORK YEARLY MEETING RELIGIOUS SOCIETY OF FRIENDS 40 (1947).

152. *Id.*

153. *Id.*

154. *Id.* One perceives in this language an unexpressed but nevertheless prescient desire to prepare for the unification of Hicksite and Orthodox yearly meetings that was to take place over the ensuing seven years. *Id.*

also that concern was being focused on the procedures for marriage under care of a meeting.¹⁵⁵ In 1949, the Committee proposed the title “Faith and Practice” because the “proposed book should give expression to our spiritual faith and should suggest ways in which the religious principles might be applied to daily living.”¹⁵⁶

In 1950, however, all of this work was set aside because of a practical exigency – the yearly meeting was running out of books.

Our present supply of Disciplines is almost exhausted and we are confronted with reprinting our present Discipline as it is or a possible revision thereof.

The Committee after careful consideration of the problems involved has decided to recommend that our New York Yearly Meeting adopt the Discipline as now used by the other Yearly Meetings in the Friends General Conference . . . [including] Philadelphia.

The type for their Disciplines is kept standing by Philadelphia Yearly Meeting so that if the [New York] Yearly Meeting approves of our recommendation, there will be a minimum of expense involved in printing our own edition.¹⁵⁷

New York Yearly Meeting approved this course of action.¹⁵⁸ And thus, after two and a half centuries, New York Yearly Meeting’s Book of Discipline no longer provided guidance or procedures for addressing conflicts among its members, or between a Quaker and a non-member. The reason for the change? Type-setting expense.

This situation changed somewhat in the 1995 edition of New York Yearly Meeting’s *Faith and Practice*. That revision included a section titled “Seeking the Spirit in Gospel Order,” which called upon Friends “to align our lives to the spirit of Christ” and reflect that commitment in organizing the “community into committees entrusted with defined responsibilities.”¹⁵⁹ Citing *Matthew* 18:15-17, this version of the Book of Discipline urged Friends to “respond creatively to conflict” and to follow the three-step process culminating in “bring[ing] the issue before the entire meeting for business.”¹⁶⁰ It also called upon “elders to exercise nurture and disciplinary care for their meetings.”¹⁶¹ However, there was neither a practice of arbitration nor an edict against brining suits at law. Indeed, the provision as a whole was characterized by a broad sense of toleration and the absence of adjudication. It

155. MINUTES AND PROCEEDINGS OF THE 253RD SESSION OF NEW YORK YEARLY MEETINGS OF THE RELIGIOUS SOCIETY OF FRIENDS 32 (1948).

156. MINUTES AND PROCEEDINGS OF THE 254TH SESSION OF NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 50-51 (1949) at 50-51.

157. PROCEEDINGS OF THE 255TH SESSION NEW YORK YEARLY MEETING RELIGIOUS SOCIETY OF FRIENDS 33 (1950).

158. *Id.* at 34.

159. FAITH AND PRACTICE, NEW YORK YEARLY MEETING, THE BOOK OF DISCIPLINE OF THE NEW YORK MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 20 (3d. ed. 2001).

160. *Id.*

161. *Id.*

vaguely cited as authority for conflict resolution “the power behind all our communal practice” and called upon it “to provide for the acceptance and resolution of the contrary feelings which are inevitable when Friends work together.”¹⁶²

The abandonment of assumptions of private dispute resolution among Quakers mirrored larger American society. By the mid-20th century, the very idea that individuals in conflict would, in the first instance, resolve a dispute by means of direct communication with each other, without initiating formal and public litigation, was so foreign that when, in 1976, Harvard Professor Frank Sander legendarily proposed that there be various ways for American society to address conflicts, he expressed himself in terms not of a variety of options for an individual, but rather options that could be offered by judicial institutions, calling for the creation of a “multi-door courthouse.”¹⁶³ The triumph of the law over individual interaction between disputants is by now culturally pervasive. “No longer is it possible to reflect seriously about American culture without accounting for the centrality of law in American history and society”¹⁶⁴

Reference to public institutions meant deference to professional dispute managers such as lawyers and judges. “Once conflict entered the courthouse, the nature of the dispute was transformed as disputants were required to defer to professionals who translated the social complexities of their disagreements into legal issues.”¹⁶⁵ The proposal that parties to a problem talk to each other about it, or jointly ask someone else’s help to resolve it privately, was termed an “alternative” to what one must assume is the “standard” procedure of giving the problem to a lawyer to handle.

London Yearly Meeting has retained some of the traditional Quaker teachings on secular dispute resolution among Friends. It still notes, for example, that “[l]egal action by Friends, and in particular legal disputes between Friends, should if possible be avoided.”¹⁶⁶ And meetings are encouraged:

to appoint a group of experienced and knowledgeable Friends who would be available to give general assistance in the amicable settlement of disputes. . . . Techniques of problem-solving, mediation, counselling or meetings for clearness may be appropriate in particular instances where disputants wish to mitigate the consequences of confrontation. It should be borne in mind that Friends were among the pioneers of conflict resolution¹⁶⁷

“The primary responsibility for finding a way to resolve [conflicts within meetings] lies with elders and overseers.”¹⁶⁸

162. *Id.*

163. Frank E. A. Sander, *Varieties in Dispute Processing*, in *THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE* 65-87 (A. Levin & R. Wheeler eds. 1979) available at <http://geoffsharp.atomicrobot.co.nz/wp-content/uploads/2010/03/PoundConfSander.pdf>. Prof. Sander’s famous paper has been credited as giving initial impetus to the Alternative Dispute Resolution movement in American law.

164. AUERBACH, *supra* note 41, at 115.

165. *Id.* at 117.

166. QUAKER FAITH AND PRACTICE § 4.20 (3d ed. 2005).

167. *Id.* at § 4.21.

168. *Id.* at § 10.21.

However explicit the London Yearly Meeting is on the topic, it still stops short of suggesting or imposing arbitration as a final and binding process to address serious disputes within the Quaker congregation. The withdrawal of internal, faith-based adjudicative processes may reflect social expectations that are endemic:

With the increasingly democratic mentalities of voluntary North American church members, arbitrated settlements of church disputes are proving less and less binding [I]t is much more promising to allocate institutional resources and energy in efforts to manage conflicts than in efforts to arbitrate conflicts. Arbitration can be seen as the option of last resort when management efforts have failed.¹⁶⁹

As recently as 1955, Quaker scholar Howard H. Brinton noted that “[i]f differences exist between members, overseers should endeavor to see that reconciliation is effected and that arbitrators are appointed if need be.”¹⁷⁰ However, by the time Brinton wrote those words the authority for such a procedure had long disappeared from formal books of discipline. The practice now is unknown to most, and considered quaint by the rest.

VI. CONCLUSION

As we have seen, arbitration of disputes arising within a Quaker meeting is a practice of centuries’ lineage with deeply engrained spiritual foundations. Though its relatively recent disuse may reflect a change of social expectations, as a matter of religious practice arbitration was never intentionally abandoned. The decline of arbitration in favor of less adjudicative methods in the Quaker Book of Discipline seems to reflect neglect or expediency, rather than intentional revision of religious testimony based on corporately experienced, spirit-led discernment. Indeed, it appears that the costs of printing the 1950 version of New York Yearly Meeting’s *Faith and Practice* impelled the exclusion from that volume of arbitration as a Quaker practice, rather than any substantive consideration.

This narrative holds lessons for both modern Quakerism and, perhaps more profoundly, for arbitration itself as a procedure for the private resolution of disputes and an alternative to judicial disposition.

As to Quakerism, it seems to be a lesson in the consequences of spiritual neglect. A practice of centuries’ legacy is ordinarily not simply abandoned without a clear intent to do so. It seems incongruous on its face that, in a community that so values unity and spiritual discernment in its decision-making process,¹⁷¹ the practice of arbitration of inter-community conflict should fall to the wayside out of mere thoughtlessness rather than as a result of faith-based discernment. Quakers are not the only religious community to adopt faith-based procedures for the resolution of internal disputes.¹⁷² They do appear, however, to be one of the few who have abandoned them.

169. HUGH F. HALVERSON, *MANAGING CHURCH CONFLICT* 51 (1991).

170. HOWARD H. BRINTON, *GUIDE TO QUAKER PRACTICE* 38 (1955).

171. See *supra* note 76 and accompanying text (discussing Quaker decision-making).

172. See Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of America Precedent*, 57 N.Y.L. SCH. L. REV. 287 (2012–2013) (discussing binding dispute resolution for Jewish faith communities); LUTHERAN CHURCH MISSOURI SYNOD, *HANDBOOK* 39–54

Moreover, the spiritual and religious testimonies of the Society of Friends that gave rise to the concept of “gospel order” remain perfectly viable in modern Quaker practice. The principles of integrity, pacifism and equality that spring from it¹⁷³ are still observed; and the scriptures on which the practice of conflict resolution pursuant to the three-step process set forth in Matthew 18 are not undermined in modern Quaker thought or neglected in modern Quaker practice. All of the promised benefits of internal conflict resolution within the covenanted religious community rest undisturbed. To retain the precepts giving rise to a practice, while relinquishing the practice itself, seems to lack the integrity to which Quakers have always aspired.¹⁷⁴

The abandonment of intentional “gospel order,” culminating in arbitration by elder members of the Society, also brings into relief the salutary effect that the practice had on the life of the meeting itself. Clearly, the tradition of arbitration arose (at least in part) out of an aspiration that the religious community be cohesive, supportive, loving, and in a covenanted state—and the ambition to maintain that condition. The intended effect of arbitration within the meeting was not, ultimately, the particular decisions rendered of who gets what cattle or who was found to have wrongly dealt with whom; its real value was that all who were called to arbitration attended, and all who were subject to an arbitration award complied. That is to say, members acknowledged the authority of the monthly meeting over their individual assertions, including in matters of commercial, marital, and community concern. They acknowledged, by their participation in and compliance with arbitration, that they were part of a bigger thing.

The absence of a definitive healing mechanism in modern Quaker meetings allows wounds to fester unattended. Without definitive, Spirit-infused adjudication of issues rising among members of a Quaker meeting, rancor can grow without abatement, sometimes affecting the entire community, and the express acknowledgement of community accountability is lost. One member of a meeting takes another to court and obtains a judgment, which the other ignores. And every Sunday the two of them sit in the same room, furious at the other and hurt by the other’s presence. The meeting itself does nothing to contain the seething animosity in its midst, seemingly incapable of acting in its own collective welfare. Many Quaker communities, under the guise of tolerance, enable bad behavior that hurts its members and cripples its own spiritual integrity.¹⁷⁵ Friends’ traditional, scripturally-

(2013) (discussing similar procedures for the Lutheran Synod). See also Brian Bloch, *Creating a Faith-Based Conflict Management System*, 14 HARV. NEGOT. L. REV. 249 (2009) (discussing the structure of a comprehensive conflict management system for the International Society of Krishna Consciousness).

173. See *supra* Part II (providing a discussion of the relationship between “gospel order” and fundamental Quaker traditions).

174. The Quaker tradition of integrity finds its root in *Matthew* 5:37: “Let your communication be, Yea, yea; Nay, nay.” Stemming from this principle of truth and candor are Quaker practices of declining to take oaths (“Friends hold one standard of truth”), and Quaker traditions of honest commercial dealings dictate that “we arrive at what we consider a fair value for buying and selling time, food, labor, material goods, and services. We do not try to gather any profit in excess of need or worth.” FAITH AND PRACTICE INTERMOUNTAIN YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS 46-47 (2009). See MIKE KING, *QUAKERONOMICS: AN ETHICAL CAPITALISM* 27-114 (2014) (providing a fascinating account of the distinctive ways in which the virtue of integrity distinguished Quaker-owned business during the English industrial revolution during the 18th and 19th centuries).

175. See *Conflict in Monthly Meetings: Crisis or Opportunity* (New York Yearly Meeting 2013), available at https://www.youtube.com/watch?v=47fb0U_efsA&list=PL5WBhHCp_cVP6TdAL0OoE2mX9lyPoAbJn (providing at 1:30 that “[m]y heart is breaking and my spirit is exhausted trying to work through the conflict [in my monthly meeting]”).

based practice of “gospel order,” leading to arbitration if necessary, would never tolerate such persistent dysfunction, nor does any contemporary Quaker doctrine compel it.¹⁷⁶

Just as the absence of the practice of Quaker arbitration—or some other clear, defined, final, authoritative and Spirit-led procedure for addressing disputes within meetings¹⁷⁷—may reflect a disinclination of contemporary Friends to join a truly covenanted faith community, so current trends of commercial arbitration also reflect a similar departure from its mercantile origins.

Arbitration originally served to assure individual merchants that the trade community of which they were a part was prepared to determine the ultimate outcome of commercial disputes quickly, dispassionately, expertly, and according to standards of conduct recognized broadly by the mercantile community itself. Both mercantile arbitration and Quaker arbitration thus shared common salient attributes:

- A defined community . . .
- That shared specific standards of behavior unique to its members . . .
- That valued the absence of disruption that might threaten its group ambitions . . .
- That trusted its internal determinations more than those that could be achieved by referral outside the community . . .
- That had a generally-accepted method of enforcing its determinations . . .
- And that had a sound basis for the traditional practice of binding private dispute resolution.

These attributes are essential to the very concept of arbitration as a method of non-judicial, consensual, final, and binding resolution of disputes, and many of them seem no longer to pertain to either mercantile or religious communities. Modern theories of arbitration contemplate that the process is purported to be consented to by employees, consumers, credit card users, software purchasers, and others who share no attributes of a tight, defined community. Generally applicable legal principles apply to the arbitration of these conflicts, rather than standards of behavior unique to a defined and intentional community. An entire economic sector—professional legal services—devotes itself to managing disruptive conflicts, which are broadly accepted as inevitable in any event, and is relied upon to advocate for the legal “rights” of various parties to a dispute with the understanding that determinations are best made, and best enforced, by social institutions such as public courts. No distinct practice or tradition of private adjudication has survived this evolution, and no distinct social, economic, or spiritual objectives are served by modern arbi-

176. See CRONK, *supra* note 15, at 42. Cronk links abandonment of “gospel order” with erosion of other fundamental Quaker practices: “Tradition is a record and embodiment of God’s work in history and in the created order. Cut off from this history, we become a rootless people, unable to make prophetic use of the past to help discern the meaning of faithfulness in the present. If we forget that God’s new order must take some shape and form in daily life, we risk upholding an airy faith unrelated to flesh and blood lives.” *Id.*

177. “Discouraging a member from suing simply by advising, ‘Don’t sue!’ is not enough. Meetings must be willing to give [their] members spiritual and emotional support as well as the requisite procedural tools to make real resolution possible.” SAGAFI-NEJAD, *supra* note 7, at 197.

tration that the general law does not equally address. Rather, the process is perceived merely as an alternative forum to vindicate the same rights deriving from the same standards and the same inter-relational behaviors as would be addressed by a public court in the application of standard legal principles.

Modern arbitration is taught, not in business school or divinity school, but instead in law school—as a legal practice, not a remedial one. An increasing number of court cases are brought seeking to compel contracting parties to arbitrate; to order convened arbitrations to cease in favor of court proceedings; to render private arbitration awards into enforceable court judgments; or to vacate arbitration awards as unenforceable. Arbitrators are almost always lawyers; disputants in arbitration are almost always represented by counsel; and (at least in the United States) the process contemplates pre-hearing discovery including exchange of documents (including electronic documents) and pre-hearing sworn testimony through deposition. Such practices reflect a social and commercial assumption that arbitration is no longer a method of commercially rational private means of dispute resolution, but rather a legal process in a forum other than a court.

The study of the disuse of Quaker arbitration, then, leads us to acknowledge the devolution of modern arbitration itself. In any community—whether one sharing a common faith or one sharing a common mercantile practice—private arbitration among members of a close and dependent society is, ultimately, an exercise in mutual accountability. In the absence of that accountability, and in the broadly accepted modern practice of disputants' engaging advocates to argue law, rather than directly and frankly engaging each other in a search for an amenable outcome, an essential attribute of arbitration is missing and its practice is skewed.

At its core, arbitration over the centuries has relied upon a closed community with common goals, accepting that mutual accountability is essential to their welfare. The acknowledgement within the community of specific expectations for behavior—unique to that specific community—is an essential element of private dispute resolution and the key to the practice of arbitration as a means of the community's achieving its objectives. The Quaker community changed, and as it lost those principles of mutual reliance, the practice of arbitration ceased to address its wounds or affirm its basic strengths. Might commercial arbitration have lost its essential character, as well?

APPENDIX I:

Arbitration Procedures Adopted by London Yearly Meeting, 1782 (from Extracts from the Minutes and Advices of the Yearly Meeting of Friends Held in London (James Phillips, 1783)).

A R B I T R A T I O N .

The following method is to be observed in proceeding in Arbitrations.

1. Each party having chosen one or two indifferent, impartial, and judicious friends, those so chosen are to agree upon a third or a fifth friend, unless the parties first agree in the nomination, whose name shall be inserted with the others in the bonds of arbitration, or other written agreement.
2. The arbitrators should not consider themselves as advocates for the party by whom they were chosen, but men, whose incumbent duty it is to judge righteously, fearing the Lord. They should shun all previous information respecting the case, that they may not become biassed in their judgments, before they hear both parties together.
3. The parties to enter into written engagements, or bonds in the usual form if either of them require it, to abide by the award of the arbitrators, or a majority of them, to be made in a limited time.
4. Every meeting of the arbitrators must be made known to the parties concerned, until they have been fully heard; nor shall there be any separate private meetings between some of the arbitrators, or with one party separate from the other on the business referred to them; and no representation of the case of one party, either by writing or otherwise, be admitted, without its being fully made known to the other, and, if required, a copy to be delivered to the other party.
5. The arbitrators are to hear both parties fully, in the presence of each other, whilst either hath any fresh matter to offer, until a certain time to be limited by mutual agreement. Let no evidence or witness be withheld or rejected.
6. If there should appear to the arbitrators, or to any of them, to be any doubtful point of law, they are jointly to agree upon a case, and consult council thereupon. The arbitrators are not required to express in the award their reasons for their decision. One writing of the award is to be delivered to each party.

B 2

It

12

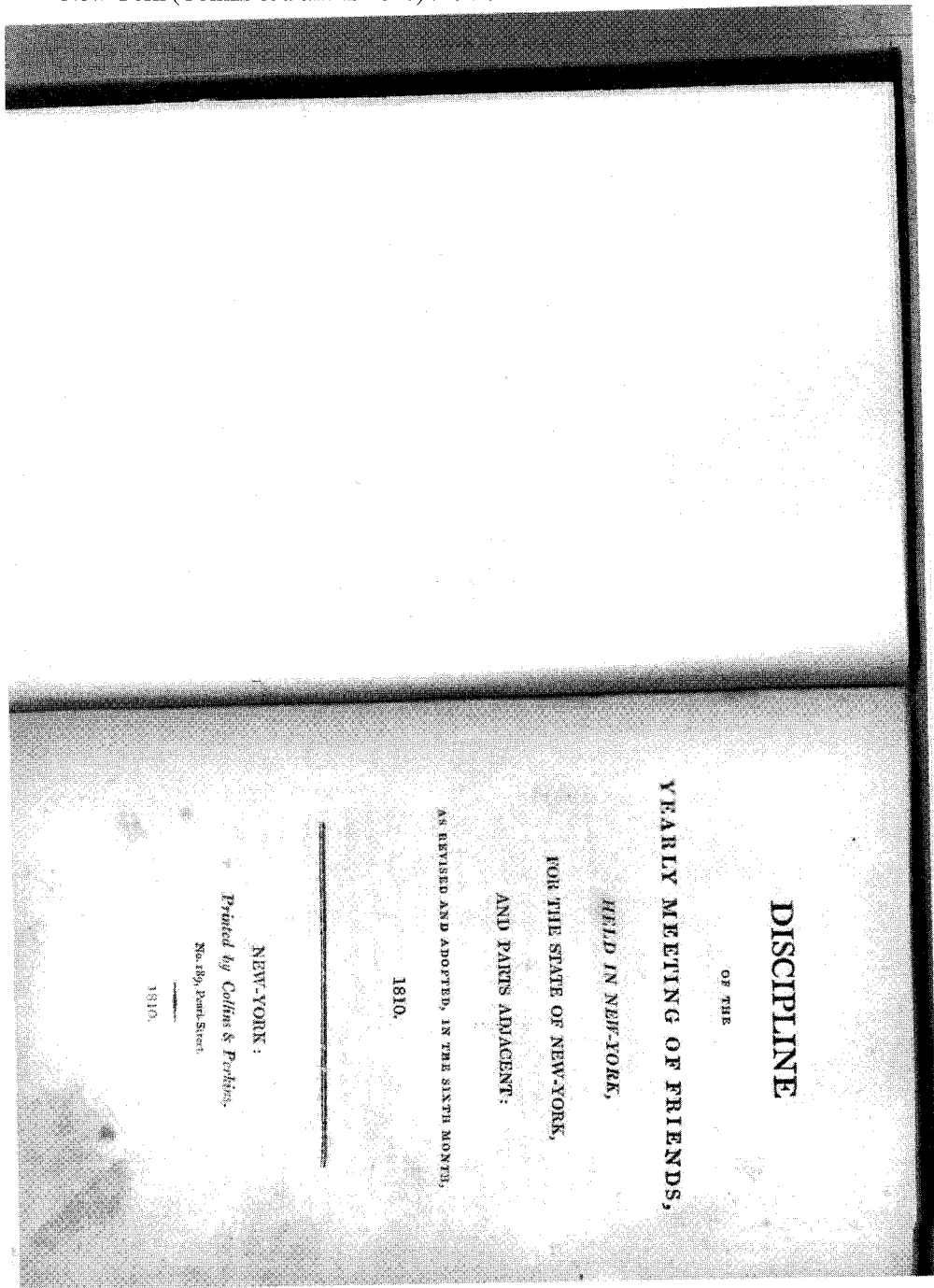
A R B I T R A T I O N.

It is recommended to arbitrators to propose to the parties, that they should give an acknowledgment in writing before the award be made, that they have been candidly and fully heard.

Matters of defamation are not subjects to be arbitrated, until the defamation is proved, and that some injury is sustained by the defamed in his trade or property; and in that case the damage should be submitted to arbitration. 1782.

APPENDIX II:

Discipline of the Yearly Meeting of the Religious Society of Friends Held in
New York (Collins & Perkins 1810) at 90-94



Differences and Arbitrations.

SHOULD differences arise between any members of our society, about their temporal concerns, according to ancient and comely order, brother ought not to go to law with brother, except from apparent and urgent necessity, as is hereafter expressed and limited; namely, the party thinking he has reason of complaint, is to speak in a calm and friendly manner, or, if he live at a distance too great to do it in person, he should write to the party by whom he thinks himself injured, or in danger of suffering in his just right; endeavouring, by gentle means, in a brotherly manner, to obtain it; but if this orderly proceeding prove ineffectual, either himself, or, if he live at a distance, some friend to whom he may write and empower on his behalf, should take one or more of the overseers, or other judicious Friends, and in like manner make the claim; and the Friends accompanying the complainant are to use their endeavours to have the matter justly and expeditiously settled between the parties. Should the case appear to be a plain one, or a debt against which no reasonable objection is made by the debtor, they are to advise the party

DIFFERENCES AND ARBITRATIONS. 91

complained of to make satisfaction, without carrying it either to arbitrators or to the meeting; but should there appear to be either unsettled differences in accounts, or cause for dispute, and they cannot effect a settlement between the parties themselves, they are to advise them to submit it to arbitration. If either party refuse to do this, such refusal ought to be represented to the preparative meeting by the overseers, or by the other party, if neglected by them; previous notice of which is to be given to the person complained of. And, provided the parties cannot, by the meeting's care, be brought to an agreement, or to refer the subject to arbitration, the complaint should be carried from the preparative to the monthly meeting; previously notifying the party complained of. The first proceeding of the monthly meeting should be to inquire whether the before-mentioned gospel order has been duly observed; and if it has not, the complainant is to be referred back to the preparative meeting, and no notice of the subject taken on minute: but should it appear, that the necessary care has been previously taken, the monthly meeting is to appoint a committee to have a conference with the parties, and to ascertain whether the case be attended with such circumstances as will justify the monthly meeting in advising it to be left to arbitration. Should this appear to be the case by the report of the committee, the parties are to be again advised to submit the subject to arbitration: and if either of them refuse to comply, the monthly meeting, after the necessary labour with the person refusing, should proceed to disown him.

92 DIFFERENCES AND ARBITRATIONS.

When a case of difference has been submitted to arbitration, the award ought to be final, unless it should appear notoriously evident, that the arbitrators have materially erred in their judgment, or proceedings, or have not given sufficient opportunity of producing the necessary evidence in the case: where this appears evident to the monthly meeting, the quarterly meeting should be informed, that the monthly meeting has a case before it, in which it desires assistance; and the quarterly meeting is to appoint a committee to sit with, and assist the monthly meeting therein; and should it appear, on mature consideration, that there is cause for dissatisfaction, a rehearing is to be granted by the same, or other arbitrators, and their award shall be final.

When arbitrators are chosen in any case, they ought, as speedily as may be, to appoint time and place, and attend duly to the subject, giving the parties and their witnesses a full and fair hearing, in the presence of each other; they should avoid unnecessary delay, and make the award within the time appointed.

As there may be circumstances which would render it unreasonable to require a compliance with the beforementioned procedure, such as, firstly, the party absconding, or leaving the country with the design of defrauding his creditors; or secondly, when the time it would take to go through the meeting, might be a manifest damage to the creditor or claimant, as in cases of apparent danger of bankruptcy, and the party being largely in debt, and other creditors generally commencing suits, or

DIFFERENCES AND ARBITRATIONS. 93

otherwise securing their demands; or when, by the statute of limitation, a claim may be barred in law; or, thirdly, when there may be danger of future damage to those who may submit thereto, as in the case of executors, administrators, trustees, or Friends who stand as security for those who are not in membership with us; it may therefore be necessary, and it is advised, that monthly meetings hold excused such as shall appear to them to be thus necessitated to proceed at law; and the parties are cautioned to conduct themselves towards each other with decency and moderation, without anger or animosity, which will be a becoming testimony even in courts, and shew that nothing but the nature of the case, and our common station with our neighbours, under the laws of the land, bring any of us there.

If any person in membership with us, shall arrest, or sue at law, another member, without proceeding in the manner herein before prescribed, he should be treated with for it; and, unless he make satisfaction, he is to be disowned.

It is advised that persons, differing about temporal concerns, do, as seldom as may be, choose ministers for arbitrators.

And, as it is our duty to seek peace with all men, and to avoid giving provocation, or just offence to any, it is advised that Friends do not go to law with others not of our profession, without due consideration, and having sufficient cause for it; manifesting, in contested cases, a decided preference for a settlement by arbitration.

Friends ought to give no just cause for others to go to law with them; but they should carefully

M

94 DIFFERENCES AND ARBITRATIONS.

comply with their promises and contracts; and, when they have reasons for objecting to a demand, they should shew a readiness to settle it between themselves, or submit it to reference.

Scriptures
of the Old and New Testaments.

IT is affectionately recommended to Friends, especially parents and heads of families, to endeavour, both by precept and example, to impress on the minds of the younger class a due regard and esteem for those excellent writings, the Scriptures of the Old and New Testaments, and to advise them frequently to read and meditate therein, and, at proper seasons, to instruct them, that the same blessed experience of the work of sanctification, through the operation of the spirit of Truth, to which they clearly bear testimony, is to be witnessed now, as in former ages, by all who attend to its manifestations. Thus, by the Divine blessing on this pious care, their youthful minds may be led into a firm belief of the christian religion, as held forth in the Scriptures, and particularly in those parts which relate to the miraculous birth, holy life, blessed example, doctrine and precepts, of our Lord and Saviour Jesus Christ.